

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6178 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

RAMESHCHANDRA DHARAMSINH BHADORIA

Versus

STATE OF GUJARAT

Appearance:

MS SUMAN PAHWA for Petitioner

Mr. Samir Dave, A.G.P. for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 29/09/1999

ORAL JUDGEMENT

Heard learned Advocate Mr.Suman Pahwa for the
petitioner and learned A.G.P. Mr. Samir Dave for the
respondents nos.1,2 and 3.

1. The detention order dated 30th March, 1999 passed
by the respondent no.2-Police Commissioner, Rajkot City,
against the petitioner in exercise of powers conferred
under Section 3(1) of the Gujarat Prevention of
Antisocial Activities Act, 1985("PASA" for short) is
challenged in the present petition under Article 226 of

the Constitution.

2. The grounds of detention supplied to the petitioner under Section 9(1) of "PASA" is produced vide Annexure "B" at running pages 16 to 58 of the compilation which indicate that the petitioner who has been serving as a Branch Manager of Punjab National Bank, Rajkot is alleged to have been involved in about 12 cases filed against him at Rajkot City Police Station on 23rd September, 1998 in respect to offences made punishable under Section 406, 409, 420, 467, 468, 171, 114 and 120-B of the Indian Penal Code. That at present all the cases are pending investigation. It is alleged in the said criminal case that the petitioner as Branch Manager of a nationalised bank has made advances to different parties in collusion with his accomplice and accepted forged valuable security for the advances made. That the petitioner aided and abated different loanees to avail benefit of advances made, and thereby, approximately, an amount of Rs.81,40,000/- has been lost by Punjab National Bank.

3. The respondent no.2 as detaining authority after having construed the material in respect to police papers of above stated criminal cases filed against the petitioner has arrived at the conclusion that the petitioner is a " dangerous person" within the meaning of Section 2(c) of "PASA". That the petitioner having been released on bail is likely to continue his antisocial activity and resort to general provisions of law are insufficient to prevent the petitioner from continuing such antisocial activity which prejudicially affect the maintenance of public order ,and hence, the impugned order is passed.

4. The petitioner has challenged the impugned order on numerous grounds. Placing reliance on the judgment rendered by this Court in the matter of HASMUKH N KOTAK Vs. STATE OF GUJARAT (Spl.C.A no.784/99 decided on 17-8-1999), it is urged at the Bar that the said Hasmukh N. Kotak has been taken as a co-detenu under a similar order alongwith the present petitioner. That in the said matter, this Court has expressed the view that offence committed by said Hasmukhbhai N. Kotak are of grave financial offences which requires trial and if proved appropriate punishment could be meted out, however, the said activity could hardly be said to be affecting public order as envisaged under the relevant provision of "PASA". On the basis of the said observation, this Court has quashed and set aside the detention order of co-detenu-Hasmukh N. Kotak. Similarly, the detention

order against the co-detenu Hitenbhai Vanmalidas Ganatra has also been quashed and set aside by this Court vide order dated 23-9-1999 passed in Spl.C.A no.5357/99. That , in the instant case, scrutiny of grounds of detention disclose that except the incident in respect to 12 criminal cases filed against the petitioner on 23-9-1998 there is no other information in respect to any alleged criminal activity which is likely to or has been adversely affecting the maintenance of public order. That thereby, it is difficult to find a live link between the alleged criminal activity of the petitioner as stated in the grounds of detention and the impugned action taken. That in the matter of PRADEEP NILKANTH PATURKAR VS. S. RAMAMURTHI & ORS. (AIR 1994 SC 656) the proposition has been approved and elucidated that on account of lapse of considerable time between the alleged criminal activity and the action taken by the authority, the subjective satisfaction for taking action under "PASA" vitiates and renders the detention order invalid.

5. In the instant case, though rule is served to the respondents, none of the respondents have filed any affidavit so as to provide any explanation, much less, a reasonable explanation in respect to live link connecting the alleged criminal activity of the petitioner as stated in the grounds of detention and the action taken by passing the impugned order. Consequently, the subjective satisfaction of the detaining authority stands vitiated, thereby rendering the impugned order bad in law. In that view of the matter, I am constrained to hold that the continued detention of the petitioner being illegal, the petition deserves to be allowed.

6. On the basis of the aforesaid discussion, the petition is allowed. The impugned order of detention dated 30th March, 1999 passed by the Police Commissioner, Rajkot City, against the petitioner-detenu is hereby quashed and set aside. The petitioner-detenu-Ramchandrasinh Dharamsinh Bhadoria is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly.

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